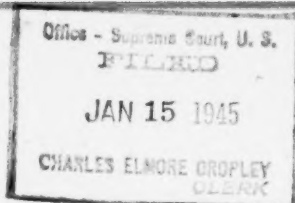


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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1944

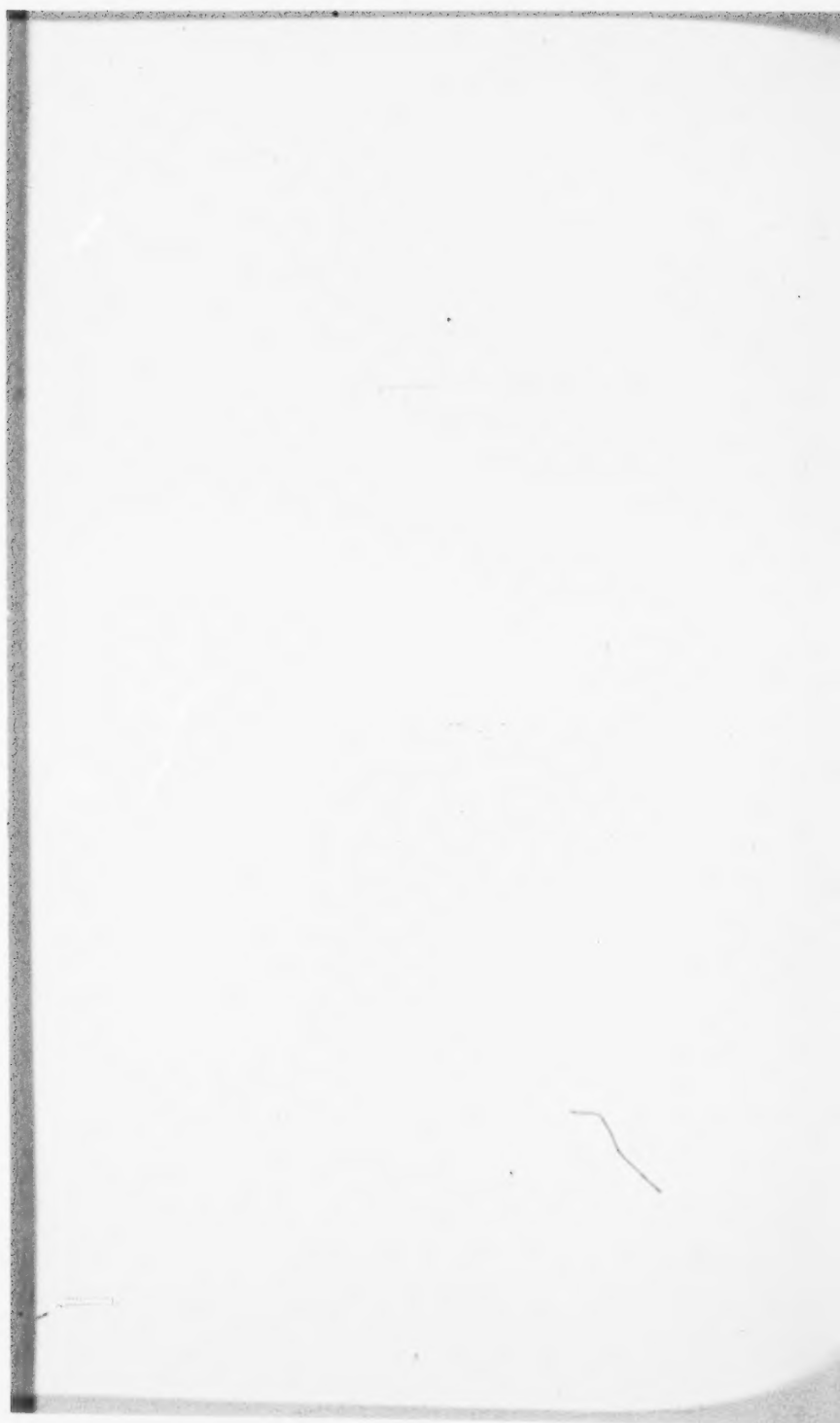
JAMES O. GREENAN AND EDITH GREENAN,  
*Petitioners,*

*vs.*

COMMISSIONER OF INTERNAL REVENUE,  
*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT AND BRIEF IN SUP-  
PORT THEREOF

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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No.

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JAMES O. GREENAN AND EDITH GREENAN,  
*Petitioners,*  
*vs.*  
COMMISSIONER OF INTERNAL REVENUE,  
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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*To the Honorable Harlan Fiske Stone, Chief Justice of  
the United States, and the Associate Justices of the  
Supreme Court of the United States:*

Your petitioners respectfully show:

I

**Summary and Statement of Matters Involved**

The petitioners James O. Greenan and Edith Greenan were husband and wife at all times during the taxable years 1935, 1936, 1937 and 1938. No income tax return

was filed by either for the years 1935 and 1936. Greenan and his then wife, Edith Greenan, resided in the Philippine Islands during those two years and filed no income tax returns for them, claiming that as 80 per centum or more of the gross income of James O. Greenan was derived from sources within the Philippine Islands and 50 per centum or more of his gross income was derived from the active conduct of a trade or business within the Philippine Islands they were exempt from Federal income taxes and were not required to file income tax returns for those two years (R. 8, pars. 2 and 4). A return or returns were filed for the year 1938 (R. 31), but whether they were joint or separate returns does not appear from the record.

Presumably, the Commissioner for the years 1935 and 1936 made a return for the parties under the provisions of USCA, Title 26, Internal Revenue Code, Section 3612, which provides that when a person fails to make or file a return prescribed under the authority of law or by regulation, the Commissioner may from his own knowledge or from such information as he can obtain from testimony or otherwise make a return.

On May 7, 1943, the Commissioner of Internal Revenue determined a deficiency income tax liability against the petitioners James O. Greenan and Edith Greenan for the taxable years ending December 31, 1935, December 31, 1936, and December 31, 1938, in the sum of \$159,262.86 and penalties of \$39,472.68 and on the same day gave written notice thereto to the petitioners here (R. 25). The deficiency was joint and a joint notice was sent to each of the petitioners (R. 27). The assertion by the Commissioner was one of joint liability as shown by the deficiency letter and made clear because there is no attempt either in the deficiency letter or in the computations to apportion the tax liability between the taxpayers in accordance with their respective incomes. A joint tax was assessed (R. 25-38).



Within the ninety day period fixed by law and on July 17, 1943, the petitioners James O. Greenan and Edith Greenan filed in the Tax Court of the United States their joint petition for a redetermination of the deficiency set forth by the Commissioner in his notice of May 7, 1943 (R. 2-42). Said petition was signed by counsel and was verified by James O. Greenan on his own behalf and on behalf of Edith Greenan, co-petitioner. In this verification, James O. Greenan made oath that "Edith Greenan has no knowledge of or concerning the matters and things involved herein;" (R. 24).

The Petition in the Tax Court recites:

"5. That petitioner Edith Greenan has no knowledge of or concerning the matters and things herein alleged or of or concerning the alleged deficiency income tax the subject hereof.

"6. That hereinafter the word 'petitioner' will be deemed to refer only to the petitioner James O. Greenan unless the contrary affirmatively appear" (R. 8).

The Petition in the Tax Court contained the names of both taxpayers as petitioners in its caption (R. 2) and recited in the opening statement: "The above named petitioners, James O. Greenan and Edith Greenan, hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated May 7, 1943 and bearing the following symbols: IRE: 90-D HEA (R. 2, 3). The Petition also sets forth the addresses of the petitioners, jurisdictional facts, the taxes involved, assignments of error, and statement of facts upon which petitioners grounded their petition for review and in support of the assignments of error (R. 2-24).

On August 10, 1943, the Commissioner, through his general counsel, filed in the Tax Court of the United States

his Answer to the Petition. The Answer was an answer to the Petition of both petitioners. The Answer states:

“Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the *above-named petitioners*, admits and denies as follows:” (R. 42). (Italics ours.)

The Answer continues, admitting certain of the allegations of the Petition, specifically denying others, denying other allegations for lack of information, and generally and specifically denying each allegation in the Petition not admitted, qualified or previously denied by the Answer (R. 42-46), and concludes with a prayer as follows:

“Wherefore, it is prayed that the Commissioner’s determination be approved and the *petitioners’* appeal denied” (R. 43, 44). (Italics ours.)

On the same day, and subsequent to the filing of the Answer according to the Docket Entries (R. 1), the Commissioner filed a motion to dismiss (R. 46, 47) the proceedings in the Tax Court insofar as it involved the petitioner Edith Greenan upon the following grounds:

“The deficiency letter from which this petition is filed states that duplicate originals of the joint notice of deficiency is sent to each spouse. Paragraph 4, page 8 of the petition alleges that the parties were divorced in 1941. Paragraph 5, page 8 of the petition alleges that ‘Petitioner Edith Greenan has no knowledge of or concerning the matters and things herein alleged or of or concerning the alleged deficiency income tax the subject hereof.’ Paragraph 6, page 8 of the petition alleges that ‘hereinafter the word “petitioner” will be deemed to refer only to the petitioner James

O. Greenan unless the contrary affirmatively appear.' Except for the allegations above referred to in the petition, it does not appear that petitioner Edith Greenan has any interest in this proceeding.

"The petition is not signed or verified by Edith Greenan as required by Rule 6 of the Rules of Practice before the Tax Court of the United States."

Both the Answer and the motion were served upon Geo. B. Thatcher as counsel (R. 48) and notice of the hearing of the motion to dismiss in the Tax Court was likewise served on Geo. B. Thatcher (R. 48).

On September 24, 1943, the Tax Court granted the motion of the Commissioner and entered its order dismissing the proceeding in the Tax Court for lack of jurisdiction insofar as it relates to Edith Greenan (R. 49). From this order and decision of the Tax Court, the petitioner Edith Greenan petitioned the United States Circuit Court of Appeals for the Ninth Circuit for review, in which petition James O. Greenan joined (R. 50-53).

On October 16, 1944, the United States Circuit Court of Appeals for the Ninth Circuit filed its opinion (R. 65-67) and entered its judgment affirming the decision of the Tax Court of the United States (R. 68).

## II

### **Jurisdiction**

Upon the facts and recitals above, the jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended (U. S. C. A., Title 28, Section 347).

The date of the entry of the judgment of the Circuit Court of Appeals for the Ninth Circuit sought to be reviewed is October 16, 1944.

## III

**The Questions Presented**

The Commissioner contended:

1. That the petition for redetermination of deficiency insofar as Edith Greenan is concerned (a) did not purport to be her petition in that it prayed for relief to James O. Greenan; (b) was signed by counsel on behalf of James O. Greenan only; (c) was not signed by Edith Greenan or verified by her, and that the verification of the petition by James O. Greenan merely recited that he verified on behalf of Edith Greenan; and that for these alleged deficiencies, and based upon the decision in *Schwartz v. Commissioner*, 140 F. (2d) 956 (C. C. A. 9), the decision of the Tax Court should be affirmed.

2. That the rule that one joint obligor is entitled to insist that his co-obligor join with him in the assertion of right or defense of liability does not apply to petitioners in the Tax Court because its jurisdiction is purely statutory, and, further, that the obligation could not be joint but could only be joint and several or merely several.

The petitioner Edith Greenan and her co-petitioner James O. Greenan contend:

A. That verification of the Petition is a formal or modal matter and not jurisdictional in the Tax Court, and that this is true as to the signature of the petitioner Edith Greenan; that the Petition was signed by counsel (R. 23) and verified by James O. Greenan, one of the petitioners on behalf of himself and his co-petitioner Edith Greenan (R. 24).

B. That the rules requiring verification are merely procedural and do not limit or control the statutory jurisdiction conferred upon the Tax Court.

C. That the Commissioner having answered to the merits, thereby having joined issue on matters of fact, waived all formal defects as to the signature of counsel, the signature of the petitioner, or the lack of separate verification on the part of Edith Greenan.

D. That the notice of deficiency was joint and it was therefore not necessary for both parties to sign and jointly verify the petition, but that it was sufficient if it was and is signed or verified by one of the parties jointly named in the notice of deficiency.

E. That as verifications, signatures, and matters of like nature are not jurisdictional, the Petition should not have been dismissed on the ground that the Tax Court had no jurisdiction but at the most the petitioner Edith Greenan should have been ordered or given an opportunity to correct the defects, if any, by amendment.

#### IV

##### Reasons for Granting the Petition

1. The decision and opinion of the United States Circuit Court of Appeals for the Ninth Circuit is in conflict with the decisions of the same court and with other Circuit Courts. See

*Burnet v. First National Bank of Fresno* 46 Fed. (2d) 631 (CCA 9);

*Leidigh Carriage Co. v. Stengel*, 95 Fed. 637, 641;

*Continental Petroleum Co. v. United States* 87 Fed. (2d) 841 (CCA 10).

2. That the United States Circuit Court of Appeals for the Ninth Circuit has decided an important question of Federal law which has not been, but should be, settled by this Court.

3. That the United States Circuit Court of Appeals for the Ninth Circuit has decided a Federal question in a way probably in conflict with the application decision of this Court.

4. That the United States Circuit Court of Appeals for the Ninth Circuit in its opinion and decision has so far departed from the usual and accepted course of judicial procedure or so far sanctioned such a departure by the Tax Court of the United States as to call for an exercise of this Court's power of supervision.

5. That the United States Circuit Court of Appeals for the Ninth Circuit has decided a general question of law probably untenable or in conflict with the great weight of authority.

6. This Court granted a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit in the case of *Marie E. Schwartz v. Commissioner*, 140 Fed. (2d) 956, by order entered June 12, 1944 (88 L. Ed. page 1184), where identical questions to those here presented were involved.

7. The decision and opinion of the United States Circuit Court of Appeals for the Ninth Circuit and the order of the Tax Court dismissing the Petition as respects Edith Greenan was contrary to previous decisions of the Tax Court and its predecessor, the Board of Tax Appeals.

See *National Bank of Commerce et al., Trustees v. Commissioner of Internal Revenue*, 34 B. T. A. 119, at page 125;

*Gibson Amusement Co. v. Commissioner of Internal Revenue*, 22 B. T. A. 1212 at 1213;

*Monitor Amusement Co. v. Commissioner of Internal Revenue*, 22 B. T. A. 1214 at 1216.

WHEREFORE petitioners pray that a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit issue out of this Court to the United States Circuit Court of Appeals for the Ninth Circuit commanding said court to certify and send to this Court for its review and determination a full and complete transcript of the record and proceedings in the case entitled on its Docket "No. 10,653, James O. Greenan and Edith Greenan, Petitioners, vs. Commissioner of Internal Revenue, Respondent.", and that said judgment of said United States Circuit Court of Appeals for the Ninth Circuit be thereupon reversed by this Honorable Court.

Respectfully submitted,

GEO. B. THATCHER,  
THATCHER & WOODBURN,  
*206 North Virginia Street,*  
*Reno, Nevada,*  
*Counsel for Petitioners.*

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#### **Certificate of Counsel**

The undersigned, counsel of record for the petitioners, hereby certifies that the foregoing petition in his opinion is well founded and that said petition is not interposed for the purpose of delay.

GEO. B. THATCHER.